

Before the Court ruled on the Motion, Petitioner filed a notice of appeal in the Fourth Circuit Court of Appeals. (Doc. No. 11.) On April 25, 2017, the Fourth Circuit dismissed Petitioner's appeal. (Doc. No. 15.)

II. DISCUSSION

Petitioner purportedly signed the instant Motion on December 15, 2016, before the Court entered judgment in this action. (Mot. 5, Doc. No. 10.) The Motion appears to be a follow-up to Petitioner's earlier response regarding the timeliness of his habeas Petition (Doc. No. 7). In the instant Motion, Petitioner argues that the Supreme Court's decision in Martinez v. Ryan, 566 U.S. 1 (2012), excuses the procedural default of his ineffective assistance of trial counsel claims.

In Martinez, the Supreme Court held that, in limited circumstances, "[i]nadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's procedural default [of claims] of ineffective assistance at trial." Id. at 9. This Court, however, did not hold that Petitioner's ineffective assistance of trial counsel claims were procedurally defaulted. It held that the habeas Petition was untimely. While Martinez may excuse procedural default of some ineffective assistance of trial counsel claims, it does not serve to toll the statute of limitations. See Lambrix v. Sec'y, Florida Dep't of Corr., 756 F.3d 1246, 1249 (11th Cir. 2014) ("[T]he equitable rule in Martinez 'applies only to the issue of cause to excuse the procedural default of an ineffective assistance of trial counsel claim that occurred in a state collateral proceeding' and 'has no application to the operation or tolling of the § 2244(d) statute of limitations.'" (citations omitted)). In other words, Martinez only excuses the procedural default of timely-filed ineffective assistance of trial counsel claims. Because Martinez has no bearing on Petitioner's habeas action, the instant Motion shall be denied.

IT IS, THEREFORE, ORDERED that Petitioner's "Motion to Excuse Procedural

Default and Prevent a Miscarriage of Justice” (Doc. No. 10) is **DENIED**.

SO ORDERED.

Signed: August 1, 2017

A handwritten signature in black ink, appearing to read "Frank D. Whitney", written over a horizontal line.

Frank D. Whitney
Chief United States District Judge

